



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 174806

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**PRELIMINARY RECITALS**

On June 3, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § DHS 10.55, to challenge a decision by the Chippewa County Department of Human Services regarding Medical Assistance (MA). The hearing was held on July 12, 2016, at Chippewa Falls, Wisconsin.

There is no issue for determination because the matter is moot.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Cindy Carlson

Chippewa County Department of Human Services  
711 N. Bridge Street  
Chippewa Falls, WI 54729-1877

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Chippewa County.

2. The petitioner receives institutional medical assistance under the spousal impoverishment provisions of the program.
3. The petitioner has not been able to transfer a timeshare property located in Florida to his wife because the property management company will not accept the authority of the power of attorney he granted her.
4. The department initially ended the petitioner's medical assistance benefits but has since reinstated them retroactive to the date they were ended.

### **DISCUSSION**

The petitioner is an institutionalized man suffering from dementia who depends upon others for everything including making all decisions. He receives medical assistance under the spousal impoverishment provisions of the program. These provisions increase the normal \$2,000 asset limit for medical assistance so that a spouse remaining in the community does not become impoverished. Wis. Admin. Code, § DHS 103.06(1)(a) and Wis. Stat. §§ 49.47(4)(b)3g and 49.455; *see also* 42 U.S.C. § 13964-5. One requirement of this program is that the institutionalized spouse transfer any property exceeding the normal \$2,000 asset limit to the spouse remaining in the community within one year.

The petitioner and his wife own a timeshare in Florida. In 2014, he signed a document making her his power of attorney. She tried to use this document to transfer the timeshare from both of their names to her name only. The timeshare company told her that although it would accept the power of attorney if she were transferring the property to an outside party, it would not accept it to transfer it into her name. As one might expect, the company offered no legal reason for its position, and I know of none.

Regardless, the department has determined that under the current circumstances the property is not available and does not count against the medical assistance asset limit. It then restored benefits retroactive to the date those benefits ended. This makes the matter moot because there is no issue left to determine.

I explained this to the petitioner's wife, but she continues to have concerns about the future. While I understand these concerns, I cannot issue opinions on issues that are not yet before me. That said, it appears that based upon eBay and other resale listings the property is worth no more than \$100 or so. Perhaps the agency could make a finding in line with this or take some other action so that the issue does not come up every year.

### **CONCLUSIONS OF LAW**

The matter is moot because the petitioner's benefits have been completely restored retroactive to the date they were ended

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

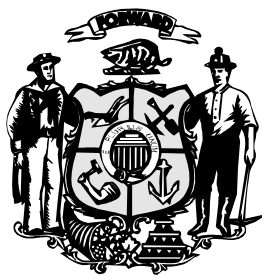
## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 19th day of July, 2016

\s \_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 19, 2016.

Chippewa County Department of Human Services  
Office of Family Care Expansion  
Health Care Access and Accountability